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*Attorneys for Defendant Deidre M. Henderson,
in her Official Capacity as Lieutenant Governor of Utah*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

UTAH DEMOCRATIC PARTY and
JOSHUA HARDY,

Plaintiffs,

v.

DEIDRE M. HENDERSON, in her Official
Capacity as Lieutenant Governor of Utah, and
JOEL FERRY, individually and in his Official
Capacity as Acting Director of the Utah
Department of Natural Resources,

Defendants.

DECLARATION OF RYAN COWLEY

Case No. 2:22-cv-00581

Judge Jill N. Parrish

1. I am over the age of 18 and have personal knowledge of the facts set forth in this Declaration.

2. I am the Director of Elections in the Office of Lieutenant Governor Deidre Henderson (“Lt. Governor’s Office”) and have served in that position since December 13, 2021. In that capacity I, together with the Elections Office staff, administer Utah elections as

authorized and directed under the Utah Election Code (the “Election Code”). *See* UTAH CODE 20A-1-101, *et. seq.*

3. For the 2022 general election, the Election Code required candidates for the Utah State House of Representatives to file a declaration of candidacy (“Declaration of Candidacy”) with a filing officer, i.e., either the Lieutenant Governor’s Office or the county clerk’s office for the county in which the candidate resides, between 8:00 a.m. on February 28, 2022, and 5:00 p.m. on March 4, 2022. *See* UTAH CODE §§ 20A-9-101(6); 20A-9-407(3)(a); 20A-9-201.5.

4. When filing a Declaration of Candidacy, an individual must indicate whether that individual is seeking the nomination through the convention process, the signature-gathering process or both. *See* UTAH CODE § 20A-9-408.5(3).

5. Before a Declaration of Candidacy can be accepted, the filing officer must read to the individual filing the constitutional and statutory qualification requirements for the office being sought and require the individual to state whether the individual meets those requirements. Additionally, if the Declaration of Candidacy is for a legislative office, the filing officer must inform the individual that Article VI, Section 6 of the Utah Constitution prohibits a person who holds a public office of profit or trust, under authority of the United States or the State of Utah, from being a member of the Utah State Legislature. *See* UTAH CODE § 20A-9-201(3).

6. On February 28, 2022, Joel Ferry (“Mr. Ferry”), who at the time was serving as a member of the Utah State House of Representatives for House District 1, declared his candidacy for re-election to that office with the Lt. Governor’s Office. In his 2022 Declaration of Candidacy, Mr. Ferry indicated that he was seeking the Republican Party nomination through the convention process. *See* Joel Ferry 2022 Declaration of Candidacy, attached at Exhibit A.

7. In Mr. Ferry's 2022 Declaration of Candidacy, he declared that the filing officer from the Lt. Governor's Office read the constitutional and statutory qualifications for the office to Mr. Ferry. Mr. Ferry further declared that he met those qualifications. *See id.*

8. The requirements for legislative office, including the prohibition on any person who holds a public office of profit or trust from being a member of the Legislature, are listed in the Declaration of Candidacy that Mr. Ferry initialed and signed. *See id.*

9. Having received Mr. Ferry's declaration that he met all constitutional and statutory qualifications for legislative office and being unaware of any inaccuracies in Mr. Ferry's declaration, the Lt. Governor's Office accepted Mr. Ferry's Declaration of Candidacy.

10. No written objection challenging Mr. Ferry's Declaration of Candidacy was received by the Lt. Governor's Office within the ten-day period following the last day for filing a Declaration of Candidacy as allowed by the Election Code. *See Utah Code § 20A-9-203(10).*

11. The Utah Republican Party held its 2022 nominating convention on April 23, 2022. At the convention, Mr. Ferry ran unopposed and was nominated by acclamation as the Republican candidate for the House District 1 seat. Following the convention, the Utah Republican Party certified the names of Republican candidates whose names should appear on the 2022 General Primary Election ballot to the Lt. Governor's Office. The Utah Republican Party certified Mr. Ferry as their nominee for House District 1. On April 27, 2022, the Lt. Governor's Office certified the primary ballot as required by UTAH CODE § 20A-9-407(6). Mr. Ferry's name was included in the primary ballot certification.

12. As required by UTAH CODE § 20A-9-701, on August 31, 2022, the Lt. Governor's Office certified to each county clerk the name of each candidate for elected office nominated

under the Election Code. Mr. Ferry's name was included in the August 31, 2022 list of nominees to be included on the 2022 general election ballot.

13. Once the Lt. Governor's Office certified the names of nominees for the 2022 general election, the county clerks' offices assumed primary responsibility for preparing, printing and mailing ballots to registered voters.

14. House District 1 comprises all of Box Elder County and a portion of Cache County. The number of registered voters in Box Elder County who will receive a 2022 general election ballot totals 21,454. The number of registered voters in Cache County who will receive a 2022 general election ballot that includes candidates for the House District 1 seat totals 1,285.

15. Box Elder County and Cache County each retain two third-party vendors to create and print ballots and ballot envelopes. County clerks' offices must comply with a series of deadlines imposed by the third-party vendors for submitting information used to program, create and print ballots and ballot envelopes. Pursuant to those deadlines, the ballots for both Box Elder and Cache Counties are already in varying stages of being programmed, created, approved by the county clerks' offices, and sent to the printing vendor.

16. Once a ballot is programmed by the vendor, any change to the ballot in a single race requires the entire ballot to be reprogrammed and recreated for printing, or reprinting if the original ballot has already been printed, with proofing and final approval to be provided a second time by the county clerks' offices to ensure the revised ballots are accurate.

17. The Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"), as amended by the Overseas Voter Empowerment Act ("MOVE") protects the right of U.S. military service members and U.S. citizens residing outside the United States to vote in federal elections

and requires absentee ballots to be mailed to registered overseas voters at least 45 days before a federal election. *See* 52 U.S.C. §§ 20301-30311.

18. Because the 45th day before the 2022 general election date of November 8, 2022 is Saturday, September 24, 2022 and is not extended to the next business day, the county clerks' practice is to mail absentee ballots to overseas voters on the last business day before the 45-day deadline imposed by UOCAVA and MOVE, which is Friday, September 23, 2022. This practice is consistent with the practice followed by other states.

19. The United States Department of Justice enforces UOCAVA and MOVE and is authorized to file a civil lawsuit for declaratory or injunctive relief as necessary to ensure compliance. *See* 52 U.S.C § 20307.

20. Because the third-party vendors used by Box Elder and Cache Counties to program, create and print ballots and ballot envelopes provide ballot creation and printing services to counties nationwide, it is uncertain whether revised ballots that do not include Mr. Ferry's name as a candidate could be reprogrammed, recreated and printed or reprinted in time for Box Elder and Cache Counties to comply with the September 23, 2022 deadline for mailing absentee ballots to registered voters who reside outside the United States.

21. Depending on whether ballots have already been printed, the cost of revising the ballots to remove Mr. Ferry's name could be as much as \$1.25 per ballot. There are 22,739 registered voters in House District 1. The estimated maximum cost to revise the ballots is therefore calculated to be \$28,423.75.

22. To avoid risk of ballot errors, missed deadlines with third-party vendors that jeopardize Utah counties' ability to meet the federal statutory deadline for mailing absentee

ballots to overseas voters, increased burdens placed on third-party vendors that could lead to ballot errors and missed deadlines for other states serviced by those vendors and increased costs for recreating and printing revised ballots, any changes to general election ballot need to be made before the August 31, 2022 statutory deadline for the Lt. Governor's Office to certify general election candidates.

DECLARATION UNDER PENALTY OF PERJURY

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the above statements are true and based upon my personal knowledge.

DATED: September 14, 2022.

/s/ Ryan Cowley
RYAN COWLEY
*(Signed copy of document bearing signature
of Ryan Cowley is being maintained in the
office of the Filing Attorney)*

EXHIBIT A

2022 QUALIFIED POLITICAL PARTY UTAH STATE LEGISLATURE DECLARATION OF CANDIDACY

of

Joel Ferry

Print name EXACTLY as it shall appear on the ballot

THIS IS A **PUBLIC** FORM FOR DISPLAY ON THE STATE WEBSITE

Office to file for:

House of Representatives

District:

1

I am a member of the

Republican

political party;

Address (Home or Mailing for public display):

780 N. 1100 W.

Brigham City, UT 84302

OR

Phone:

801-726-4032

Email (Optional):

joelferry@gmail.com

I am seeking the nomination using:

- ☒ The convention process described in Utah Code 20A-9-407;
☐ The signature-gathering process described in Utah Code 20A-9-408;
☐ Both the convention process and the signature-gathering process.

Please check the following box if it applies to you:

- ☒ I currently hold the office for which I am seeking reelection, have previously filed a conflict of interest disclosure in accordance with Utah Code 20A-11-1603, and the conflict of interest disclosure is updated and accurate as of today's date.



[Signature] Signature of Candidate (must be signed in the presence of the filing officer)

Subscribed and sworn before

Hayden Loftus

this

2/28/22

(filing officer name)

(month/day/year)

2/28/22

(Date Received)

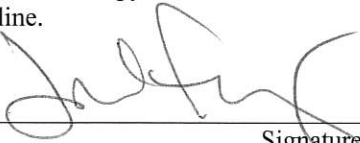
(Seal)

Lieutenant Governor 2022

QUALIFICATIONS FOR CANDIDATE FILING DECLARATION

Please initial:

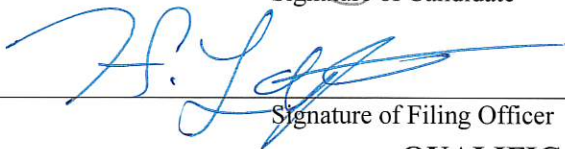
JF The filing officer read the constitutional and statutory qualifications as listed below to me, and I meet those qualifications.JF I agree to file all campaign financial disclosure reports, and I understand that failure to do so may result in my disqualification as a candidate for this office, possible fines and/or criminal penalties, including removal of my name from the ballot.JF I received a copy of the pledge of fair campaign practices, and I understand that signing this pledge is voluntary.JF I provided a valid email, or physical address if no email is available, and I understand this will be used for official communications and updates from election officials. **(PRIVATE CONTACT FORM)**JF I understand I will receive all financial disclosure notices by email._____ I prefer to also receive financial disclosure notices by mail at the following address:

_____JF I understand my name will appear on the ballot as it is printed on this declaration of candidacy, and that I may not make any amendments or modifications after 5:00 P.M. on the final day of the filing period. I also realize this form is a public document and will be displayed publicly.JF I have received a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and its applicable deadline.

Signature of Candidate

2-28-2022

Date



Signature of Filing Officer (Or Notary)

2/28/22

Date

QUALIFICATIONS

Before the filing officer accepts any declaration of candidacy, the filing officer shall read to the candidate the constitutional and statutory requirements for candidacy, and the candidate shall state whether he/she fulfills the requirements. If the candidate indicates that he/she does not qualify, the filing officer may not accept his/her declaration of candidacy (Utah Code Section 20A-9-201, 202).

UTAH SENATOR AND REPRESENTATIVE*Utah Constitution Article VI, Section 5 and 6*

- U.S. Citizen
- At least 25 years at the time of the election
- Three-year consecutive resident of Utah at the filing deadline
- Six-month consecutive resident of the district from which elected at the filing deadline
- *Qualified voter in the district from where the person is chosen
- **Not convicted of certain crimes
- Pay filing fee of **\$82.06** (Representative) or **\$114.12** (Senator)
- No person holding any public office of profit or trust under authority of the United States, or of this State, shall be a member of the Legislature: provided that appointments in the State Militia, and the offices of notary public, justice of the peace, United States commissioner, and postmaster of the fourth class, shall not, within the meaning of this section, be considered offices of profit or trust.

* A qualified voter (1) is a citizen of the United States; (2) is a resident of Utah; (3) will, on the date of that election: be at least 18 years old, and have been a resident of Utah for 30 days immediately before that election; (4) and has registered to vote.

**An individual convicted of certain crimes loses the right to hold office until convictions have been expunged OR the individual meets all of the following requirements: (1) 10 years have passed since the individual's most recent felony conviction, (2) The individual paid all court-ordered restitution and fines; and (3) the individual completed probation, granted parole, or completed the term of incarceration associated with the felony. An individual convicted of an election related misdemeanor has restored their rights to hold office according to Utah Code 20A-2-101.3.



PLEDGE OF FAIR CAMPAIGN PRACTICES

(Utah Code §20A-9-206)

There are basic principles of decency, honesty, and fair play which every candidate for public office in the State of Utah has a moral obligation to observe and uphold, in order that, after vigorously contested but fairly conducted campaigns, our citizens may exercise their right to a free election, and that the will of the people may be fully and clearly expressed on the issues.

THEREFORE:

I SHALL conduct my campaign openly and publicly, discussing the issues as I see them, presenting my record and policies with sincerity and frankness, and criticizing, without fear or favor, the record and policies of my opponents that I believe merit criticism.

I SHALL NOT use, nor shall I permit the use of, scurrilous attacks on any candidate or the candidate's immediate family. I shall not participate in, nor shall I permit the use of, defamation, libel, or slander against any candidate or the candidate's immediate family. I shall not participate in, nor shall I permit the use of, any other criticism of any candidate or the candidate's immediate family that I do not believe to be truthful, provable, and relevant to my campaign.

I SHALL NOT use, nor shall I permit the use of, any practice that tends to corrupt or undermine our American system of free elections, or that hinders or prevents the free expression of the will of the voters, including practices intended to hinder or prevent any eligible person from registering to vote or voting.

I SHALL NOT coerce election help or campaign contributions for myself or for any other candidate from my employees or volunteers.

I SHALL immediately and publicly repudiate support deriving from any individual or group which resorts, on behalf of my candidacy or in opposition to that of an opponent, to methods in violation of the letter or spirit of this pledge. I shall accept responsibility to take firm action against any subordinate who violates any provision of this pledge or the laws governing elections.

I SHALL defend and uphold the right of every qualified American voter to full and equal participation in the electoral process.

I, the undersigned, candidate for election to public office in the State of Utah, hereby voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in accordance with the above principles and practices."

Name: [Signature] Office: House of Reps.

Signature: Joel Ferry Date: 2-28-2022

***This is a voluntary pledge. Candidates are not required to sign this pledge of fair campaign practices.**

***This document is considered a public record and will be retained for public inspection until 30 days following the election.**